

Computer software means all types of software including operational, applicational, utilities, compilers, templates, shells and all other forms. See 86 Ill. Adm. Code 130.1935. (This is a GIL).

August 6, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 3, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, CLIENT, FIRM requests a letter ruling to clarify the sales and use tax implications of the following issues.

FACTS:

CLIENT is a provider of digital certificate solutions for businesses and individuals wanting to perform secure electronic commerce and communications over the Internet.

Internet IDs are delivered through CLIENT's 'NAME,' an on-line service which is open 24 hours a day, 7 days a week. CLIENT markets NAMEs for servers, browsers, e-mail applications and software content. End users apply for a NAME by first accessing CLIENT's website and then completing an on-line registration form. Once CLIENT authenticates the identity of an applicant (via a third party such as BUSINESS), the applicant may receive the NAME. The NAME may only be received electronically over the Internet. A NAME typically contains the following: (1) Owner's public key; (2) Owner's name; (3) Expiration date of the public key; (4) Name of the issuer (the certification authority, otherwise known as the 'CA,' that issued the NAME); (5) Serial number of the NAME; and (6) Digital signature of the issuer. The NAME is not a text file.

CLIENT has established nexus for sales and use tax purposes as a result of its physical contacts with Illinois. Here we look to the taxability of this particular transaction.

ISSUES:

- I. Are the NAMEs subject to Illinois sales tax?
- II. If a NAME is considered tangible software, is it considered custom or prewritten software?

CONCLUSIONS

- I. NAMES are not subject to Illinois sales tax.
- II. If a NAME is considered tangible software, it is considered custom software.

DISCUSSION

- I. NAMES are not subject to Illinois sales tax.

The Illinois retailer's occupation tax ('ROT') is imposed on persons engaged in the business of selling tangible personal property at retail.¹ The ROT is not imposed on intangible personal property.² ROT is imposed on all sales at retail of tangible personal property unless specially exempted from tax or exempted from the definition of 'sale at retail.'

The Illinois service occupation tax ('SOT') is imposed on persons engaged in the business of making sales of services.³ The tax is not imposed on the service itself, but is instead based on the selling price of tangible personal property transferred incident to the service. The SOT is not imposed on sales of intangible personal property.⁴

A NAME is a mathematical algorithm that is used as an identification device. Parties who do secure e-commerce business over the Internet need a form of identification from the party they are dealing with. Each party obtains a NAME from the NAME center and no tangible property accompanies the download of the NAME. The NAME is used only at the beginning of an e-commerce transaction to authenticate the parties, after which, the parties may or may not transact sales of tangible personal property.

As the NAME is a mathematical algorithm and is not tangible personal property, the sale of NAMES should not be subject to Illinois ROT or SOT.

- II. If a NAME is considered tangible software, it is considered custom or prewritten software.

Software is not taxable if it has been adapted or modified by the seller to specific individualized requirements of the purchaser.⁵ 'Computer software' means a set of statements, data, or instructions that is used directly or indirectly in a computer.

The primary goal of obtaining a NAME is the security offered to the parties while transmitting personal information over the Internet. The NAME identifies the respective parties to each other so that a secure information transfer can occur (e.g. banking on-line). The NAME, is a unique identifier that incorporates personal information into the algorithm used by each party (e.g. the bank and the customer). Each NAME is customized for the individual customer. The customized NAME incorporates such information as the customer's name, address and e-mail address. The use of customized algorithm identifiers allows the customer to ensure a secure transfer of personal information.

The customized NAME may be considered software, as it is a set of instructions that is used by a computer to identify the customer and transfer information securely. The software is customized for each customer, and as such, is exempt from Illinois ROT and SOT.

Ruling Resolution and Settlement

Based upon the preceding analysis, CLIENT's NAMES are either intangible property or custom software and should not incur sales tax.

Please confirm FIRM's conclusions so that we may advise our client on the proper treatment of these transactions going forward. We appreciate your consideration during the process. If you have any further questions or comments, please call.

86 Ill. Adm. Code 130.1935, Computer Software, has been recently amended. See enclosed revised copy of Section 130.1935. Computer software means all types of software including operational, applicational, utilities, compilers, templates, shells and all other forms. Generally, sales of "canned" computer software are taxable retail sales in Illinois. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c).

Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

A digital signature or identification is not computer software and is therefore not subject to tax. However, any software used to create, encrypt, decrypt or read a digital signature is considered to be software and may be subject to taxation.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.

¹ 35 ILCS 120/1; Ill. Admin. Code tit 86, §130.101

² Ill. Admin. Code tit. 86, § 130. 120(a).

³ 35 ILCS 115/1, 115/2, 115/3; Ill. Admin. Code tit. 86, §§140.101, 140.120, 140.201(f).

⁴ Ill. Admin Code tit. 86, §140.125(a).

⁵ 35 ILCS 115/3, 115/3-25, 120/2, 120/2-25, Ill. Admin. Code tit. 86, §130.1935(c).